

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 18-003-06-1-5-00384
Petitioners: Jerrold W. & Deborah L. New
Respondent: Delaware County Assessor
Parcel #: 18-11-05-427-001.000-003
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners appealed their property’s assessment to the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”). On February 22, 2008, the PTABOA issued its determination denying the Petitioners relief.
2. On March 19, 2008, the Petitioners filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On December 3, 2008, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn-in and testified at the hearing:
 - a) For the Petitioners: Jerrold New, Taxpayer
 - b) For the Respondent: Kelly Hisle, Deputy Center Township Assessor
Charles Ward, Witness

Facts

5. The subject property contains a single-family home located at 2604 North Hollywood Avenue in Muncie.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA valued the subject land at \$9,100 and the subject improvements at \$47,800 for a total assessment of \$56,900.

8. The Petitioners requested values of \$9,100 for land and \$38,500 for improvements for a total assessment of \$47,600.

Parties' Contentions

9. The Petitioners offered the following evidence and arguments:
- a) Mr. New, his daughter, and his son-in-law originally bought the property at an estate sale in 1997. They paid \$28,500. *New testimony*. Then, in approximately 2003, the Petitioners bought the property from their daughter for \$55,000. *Id.*¹ The Petitioners, however, claim that they overpaid for the property. *Id.* Their daughter needed to sell the property before a bank would loan she and her husband money to buy a new house. *Id.*
 - b) While the Petitioners have tried to re-sell the property, nobody has shown any interest in buying it. *New testimony*. The subject home sits on a one-block foundation instead of the normal three blocks. That irregularity decreases the home's value. *Id.*
 - c) The Petitioners also claim that the subject property's record card contains errors. That card says that the property has an open-frame porch when it actually has only a small cement slab. *New testimony; Pet'rs Exs. 1-2*. At one point there was an awning over the slab, but that awning was removed in 1997. *New testimony*. The record card also values the home's wood deck at \$2,900—far more than its actual worth. *New testimony; Pet'rs Exs. 1, 3*.
 - d) Finally, the Petitioners disagree with the amount that the subject property's assessment increased between 2005 and 2006. The assessment increased by 24%—far more than Muncie area property values increased during that same period. *New testimony*.
10. The Assessor offered the following evidence and arguments:
- a) To support the current assessment, the Respondent pointed to sales of three properties from the Petitioners' neighborhood. *Hisle testimony; Resp't Ex. 1*. Those sale prices ranged from \$50,400 to \$65,600. The subject property's \$56,900 assessment falls in the middle of that range. *Hisle argument*.
 - b) The subject property likely appraised for close to its assessed value. When the Petitioners' bought the property in 2003, they recorded a mortgage of \$52,400, and banks generally loan up to 90% of a property's appraised value. *Hisle testimony; Resp't Ex. 4*.

¹ Because Mr. New testified that he already had an interest in the property, it is not clear what interests were transferred by that second sale.

Record

11. The official record for this matter is made up of the following:

- a) The Form 131 petition
- b) A digital recording of the hearing
- c) Exhibits:

- Petitioners Exhibit 1: Subject property record card
- Petitioners Exhibit 2: Photograph of the front of the subject property
- Petitioners Exhibit 3: Photograph of wood deck at the rear of the property
- Petitioners Exhibit 4: Photographs of the subject home's foundation

- Respondent Exhibit 1: "Comparables" sheet with information for three properties
- Respondent Exhibit 2: Sheet listing information for sales of 20 properties
- Respondent Exhibit 3: Screen image with information about a mortgage from Deborah and Jerrold New to City Trust Mortgage, Inc.
- Respondent Exhibit 4: Screen image of front page of mortgage
- Respondent Exhibit 5: Property record cards for 2013 North Maplewood, 2001 North Rosewood, and 2401 North Maplewood
- Respondent Exhibit 6: Sales disclosures for 2013 North Maplewood, 2001 North Rosewood, and 2401 North Maplewood

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Notice of hearing
- Board Exhibit C: Notice signed by Delaware County Assessor authorizing Ms. Hisle to represent him before the Board
- Board Exhibit D: Hearing sign-in sheet

- d) These Findings and Conclusions.

Analysis

12. The Petitioners failed to make a prima facie case for reducing their property's assessment. The Board reaches this conclusion for the following reasons:

Burden of Proof

- a) A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). If the taxpayer meets that burden, the assessing official must offer evidence to impeach or rebut the taxpayer's

- evidence. See *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479. But the burden of persuasion remains with the taxpayer. See *Thorntown Tel. Co. v. State Bd. of Tax Comm'rs*, 629 N.E.2d 962, 965 (Ind. Tax Ct. 1995).
- b) Of course, that begs the question of what types of evidence the parties may offer to meet their respective burdens. To answer that question, one must turn to the 2002 Real Property Assessment Manual and the basic principles underlying Indiana's assessment system.
- c) Indiana assesses real property based on its "true tax value," which the Manual defines as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3,13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
- d) A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles. MANUAL at 5. By contrast, a taxpayer does not rebut an assessment's presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.*
- e) Regardless of the method that he uses rebut an assessment's presumed accuracy, a party must explain how his evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, that valuation date was January 1, 2005. IND. ADMIN. CODE tit. 50, r. 21-3-3.

The Petitioners' Case

- f) The Petitioners tried to rebut the subject property's 2006 assessment in three ways—by pointing to specific alleged errors on their property's record card, by claiming that the property was assessed for more than its market value, and by contesting what they viewed as an unrealistic 24% increase in the property's assessment between 2005 and 2006. As explained below, none of those approaches succeeded.
- g) First, the Petitioners claimed that the subject property's record card wrongly lists their home as having an open-frame porch and that it overvalues the property's wood deck. In other words, they disputed the assessor's methodology in computing the property's assessment. As the Tax Court explained in *Eckerling*, however, disputing an assessor's methodology is not enough—the Petitioners needed to offer their own market value-in-use evidence.
- h) That leads to the Petitioners' second claim, in which they at least tried to supply the necessary market value-in-use evidence. Thus, Mr. New testified that his daughter and son-in-law bought the subject property for only \$28,500. But that sale occurred in 1997—some eight years before the relevant January 1, 2005, valuation date. And the Petitioners did not explain how that sale price related to the property's value as of January 1, 2005. The 1997 sale price therefore lacks probative value. *See Long*, 821 N.E.2d at 471 (holding that an appraisal lacked probative value where the taxpayers did not explain how it related to the property's market value-in-use as of the relevant valuation date).² The Petitioners' other purportedly market-based evidence—the fact that their home was built on a one-block foundation instead of the more typical three blocks—fares no better. The Petitioners did not even attempt to quantify how that single-block construction affected the property's market value-in-use.
- i) Finally, the Petitioners' claim that their assessment increased 24% between 2005 and 2006 is irrelevant. Each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence of a property's assessment in one tax year does not show its true tax value in a different year. *See id.* Also, the Petitioners were mistaken in thinking that the assessment increase between 2005 and 2006 was designed to reflect a one-year change in the local real-estate market. More likely, that increase was designed to reflect market changes occurring during the six year period between the January 1, 1999, valuation date that applied to assessments from 2002 through 2005 and the January 1, 2005, valuation date for 2006 assessments. *See* MANUAL at 2, 4 (setting January 1, 1999, as the valuation date for the 2002 general reassessment and explaining that the Manual applies to assessments from 2002 through 2005) and 50 IAC 21-3-3 (setting January 1, 2005, as the valuation date for 2006 assessments).

² The same is true for the 2003 sale in which the Petitioners bought the property from their daughter for \$55,000. The Petitioners, however, did not rely on that sale because Mr. New claimed that they overpaid their daughter.

- j) Because the Petitioners offered no probative market-value-in-use evidence to rebut the assessment's presumed accuracy, they failed to make a prima facie case of error.

Conclusion

13. The Petitioners failed to offer probative market-value-in-use evidence to rebut the presumption that the subject property's March 1, 2006, assessment was accurate. The Board therefore finds that the assessment should not be changed. Nonetheless, the Petitioners did offer un-rebutted evidence showing that the subject property's record card erroneously reflects the subject home as having an open-frame porch. The record card should be corrected.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment. The Board, however, orders the Respondent to correct the subject property's record card to show that the property does not have an open-frame porch.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>